

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

United States of America,

Plaintiff,

v.

**Case No. 3:16-cr-073
Judge Thomas M. Rose**

Charles Darnell Spencer,

Defendant.

**OPINION AND ORDER STRIKING DEFENDANT'S MOTION TO DISMISS
(ECF 172) AND DEFENDANT'S MOTION TO SUPPRESS (ECF 173)**

This matter is before the Court on Motion to Dismiss (ECF 172) and Motion to Suppress (ECF 173) by Defendant Charles Darnell Spencer. Yesterday, Defendant filed a motion for permission to file motions out of time. ECF 168. This motion was denied earlier today. Defendant proceeded to file Motion to Dismiss (ECF 172) and Motion to Suppress (ECF 173) anyway.

Motion to Dismiss (ECF 172) is based on letters that have been in Defendant's possession since January 11, 2018. (ECF 172, PageID 712, ¶ 4). Motion to Suppress (ECF 173) asserts that search warrants were issued without probable cause. The search warrants and affidavits, which are the basis for this motion, have been in Defendant's possession even longer. Hypothetically, were either motion meritorious, Defendant should have been free long ago. They are not.

Because they are filed out of time and without permission, the Court **ORDERS** them to be struck. Should a reviewing Court find this an abuse of discretion, they would be denied in any event. Motion to Dismiss (ECF 172) is based on self-serving letters from a co-defendant that the Court finds unpersuasive. Motion to Suppress (ECF 173) asserts that the search warrant for 62 Woodhill Drive and 239 Mercer Ave were not supported by probably cause. The warrant provides probable cause for searching 239 Mercer Ave. See ECF 173-1, PageID 751-52, ¶ 47. The warrant also provides probable cause for searching 62 Woodhill Drive. See ECF 173-1, PageID 739-40, ¶ 19, and PageID 745, ¶ 32. Moreover, even if the search warrant was not supported by probable cause, the fruits would be admissible under the *Leon* good faith exception.

DONE and **ORDERED** this Thursday, May 3, 2018.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE